

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO: 1:17-CR-176

TIRRELL PERRY THOMAS,

Defendant.

\* \* \* \*

SENTENCING HEARING

\* \* \* \*

BEFORE: THE HONORABLE PAUL L. MALONEY  
United States District Judge  
Kalamazoo, Michigan  
May 11, 2018

APPEARANCES:

APPEARING ON BEHALF OF THE PLAINTIFF:

KATE ZELL  
CHRISTOPHER O'CONNOR  
Assistant United States Attorney  
P.O. Box 208  
Grand Rapids, Michigan 49501-0208

APPEARING ON BEHALF OF THE DEFENDANT:

HELEN C. NIEUWENHUIS  
PEDRO CELIS  
Federal Public Defender  
50 Louis Street, N.W., Suite 300  
Grand Rapids, Michigan 49503-2633

1 Kalamazoo, Michigan

2 May 11, 2018

3 at approximately 9:08 a.m.

4 PROCEEDINGS

09:08:41 5 THE COURT: This is File Number 17-176; The United  
6 States of America vs. Tirrell Thomas. This matter is before  
7 the Court for sentencing.

8 The Court's file reflects that on December 1st,  
9 2017, the defendant pled guilty before Magistrate Judge  
09:08:58 10 Ellen Carmody to Count One, conspiracy to commit bank fraud,  
11 contrary to 18 U.S. Code 1349 and 1344(2), and bank fraud  
12 contrary to 18 U.S. Code 1344(2) in Count Three. The plea  
13 was accepted by this Court on December 20, 2017. The Court  
14 accepts the plea agreement finding the charges pled to  
09:09:26 15 adequately reflect the seriousness of the actual offense  
16 behavior.

17 There is one objection to the presentence  
18 investigation report, which we will deal with momentarily.  
19 The Court has scored this case under the advisory guidelines  
09:09:37 20 at Offense Level 25, Criminal History Category III,  
21 resulting in an advisory guideline range of 70 to 87 months.

22 The record should reflect that Assistant United  
23 States Attorneys Kate Zell and Christopher O'Connor are here  
24 on behalf of the government. Attorney Helen Nieuwenhuis and  
09:09:55 25 Attorney Pedro Celis are here on behalf of the defendant.

1 The defendant is present in person.

2 Miss Nieuwenhuis, have you had ample opportunity,  
3 ma'am, of reviewing the presentence report with your client?

4 MS. NIEUWENHUIS: I have, your Honor.

09:10:05 5 THE COURT: Subject to your objection, do you  
6 concur in the advisory guideline range?

7 MS. NIEUWENHUIS: Yes.

8 THE COURT: Thank you.

9 Mr. Thomas, is that true, sir, you've had ample  
09:10:13 10 opportunity of reviewing the presentence report with your  
11 lawyer?

12 THE DEFENDANT: Yes.

13 THE COURT: And are you satisfied with her work and  
14 representation of you?

09:10:20 15 THE DEFENDANT: Yes.

16 THE COURT: Thank you.

17 Ms. Zell, do you concur in the scoring?

18 MS. ZELL: Yes, your Honor.

19 THE COURT: Third level is at issue in light of the  
09:10:29 20 Court's probation officer denying acceptance. So let's deal  
21 with that first.

22 Miss Nieuwenhuis, your objection. You may proceed.

23 MS. NIEUWENHUIS: Thank you, your Honor.

24 Your Honor, really this objection kind of is also  
09:10:54 25 hooked into this whole role of leadership. And from the

1 very beginning in speaking with Mr. Thomas regarding this  
2 case, the defense always knew that Mr. Thomas would be  
3 scored with leadership, and the issue of acceptance of  
4 responsibility and obstruction kind of goes around some  
09:11:19 5 statements that Mr. Thomas had made at the presentence  
6 investigation meeting, and I would like to address those,  
7 and really we are objecting to him not receiving acceptance  
8 and for the scoring of the obstruction. And as I said, it  
9 kind of dances around this issue of leadership role. There  
09:11:52 10 were stipulated facts in the plea agreement, that were very  
11 detailed, that in the defense's opinion, certainly support  
12 an enhancement for leadership. And I don't think, certainly  
13 in any discussions that I ever had with Mr. Thomas that was  
14 ever an issue, and as the Court can see, we have not  
09:12:15 15 objected to him being scored that, because he, frankly,  
16 earned it and those levels are appropriately awarded to him.  
17 It's very hard to stand before the Court and kind  
18 of articulate, you know, what my recollection is of what Mr.  
19 Thomas said, and I'm certainly not saying that Mr. Williams  
09:12:42 20 is saying something totally different than my recollection,  
21 but his commentary regarding Mr. Cobb specifically I read  
22 the presentence report as a little over broad in what Mr.  
23 Thomas had said, and it might be simply because I've had so  
24 many conversations with Mr. Thomas regarding this whole  
09:13:06 25 issue. I know that he has always said to me that he did not

1 know or have personal knowledge that Mr. Cobb was actually  
2 directly making deposits of checks. And it kind of -- that  
3 issue kind of dove tails into the issue about whether or not  
4 if he had told the falsehood to presentence whether or not  
09:13:34 5 that's material to his case, and I think under the scenario  
6 that we have, it's not. He scored with leadership. He came  
7 in and he did talk about that he had recruited at least one  
8 person. We went through the proffers and he agreed that  
9 there was a second person that he was responsible for  
09:13:55 10 recruiting. He had rented cars. He was really the conduit  
11 to the middleman, so to speak, to the people in Chicago.  
12 And he arranged payments. He made payments. And so the  
13 defense is maintaining that he has accepted responsibility  
14 for his actions in this case. And that he should be given  
09:14:19 15 acceptance of responsibility on the facts of the case.

16 I did review quite closely the proffers of Mr. Fry  
17 and Mr. Mosley, and Mr. Fry, at least as I interpret what he  
18 said in his proffer, talked about that he was under the  
19 impression there were several like separate groups kind of  
09:14:46 20 doing this. Mr. Mosley talked about that he did not know  
21 that Mr. Cobb had been making these direct deposits of these  
22 checks until after they were all arrested. And so I just --  
23 I think the main thrust of our argument is that he is not  
24 frivolously denying leadership, and I think that's kind of  
09:15:10 25 what you look at if somebody-- if we are saying he told a

1 falsehood to probation, why they would do that, whether or  
2 not that would have an impact on guidelines, and here it  
3 clearly wouldn't. He had admitted already and knew he was  
4 receiving leadership, and so you know, whether or not that's  
09:15:29 5 a materially false statement, I don't think it's material.

6 And I'm certainly open to any questions that the  
7 Court may have in regards to our arguments, your Honor.

8 THE COURT: Thank you. No questions at this point.  
9 Thank you, Miss Nieuwenhuis.

09:15:43 10 MS. NIEUWENHUIS: Thank you.

11 THE COURT: Ms. Zell, go ahead.

12 MS. ZELL: Thank you, your Honor.

13 Before I begin to address this objection, the  
14 government indicated ahead of time to the Court and defense  
09:16:00 15 counsel it would seek to move to admit stipulated exhibits  
16 and the government would request to do that now.

17 THE COURT: I see you violated one of the rules,  
18 Ms. Zell.

19 MS. ZELL: Oh, my apologies.

09:16:20 20 THE COURT: Government uses numbers.

21 MS. ZELL: Oh, I did use letters. Now I know.  
22 Thank you.

23 THE COURT: That's okay.

24 MS. ZELL: Okay.

09:16:34 25 THE COURT: I'll manage.

1 MS. ZELL: I will try to make it as clear as  
2 possible by using the alphabet.

3 THE COURT: Go ahead.

4 MS. ZELL: The government outlines in its  
09:16:44 5 sentencing memorandum the three statements that it feels are  
6 pretty clearly, blatantly false, and in a material way. And  
7 I'll address materiality first. And I think the key factor  
8 here is that the issue under determination that whatever is  
9 stated has some impact of affecting the issue under  
09:17:09 10 determination. So the defense position is that because the  
11 defendant never planned to object to a leadership  
12 enhancement, that the statements he made respecting or  
13 denying leadership or denying certain amounts of knowledge  
14 of the fraud therefore are not material, because there were  
09:17:25 15 no guidelines issues in dispute at that point because there  
16 wasn't an objection raised. As stated in the sentencing  
17 memo, there are plenty of decisions at sentencing that go  
18 above and beyond the actual guidelines applications, and the  
19 Court has to decide whether to go within the guidelines,  
09:17:42 20 above the guidelines, below the guideline, and the  
21 leadership enhancement was by no means a foregone conclusion  
22 at the time the defendant made the statements to the  
23 probation officer.

24 The statements in particular that the government  
09:17:54 25 believes are materially false, first is that Mr. Thomas did

1 not know that Co-Defendant Earl Cobb was involved in the  
2 offense at the time it was occurring. And defense counsel  
3 believes that somehow the way it's written in the PSR  
4 suggests that possibly the defendant could have known Mr.  
09:18:13 5 Cobb was involved, but perhaps the probation officer didn't  
6 ask him the right questions. I think the way it's written  
7 is very clear that he denied having any knowledge that Mr.  
8 Cobb was involved at the time it was occurring.

9 THE COURT: Mr. Cobb and the defendant are related?

09:18:26 10 MS. ZELL: They are. They are cousins, yes. And  
11 that is the defendant's own admission states that in the PSR  
12 as well.

13 So I'll just kind of briefly highlight through the  
14 exhibits that I just admitted the evidence that demonstrates  
09:18:42 15 that at the time it was occurring, the defendant was well  
16 aware that Mr. Cobb was involved.

17 The first exhibit, Government Exhibit A or 1, is a  
18 chart, a summary chart of cell site evidence. And the  
19 government mentioned in its memorandum that after the  
09:18:57 20 probation interviews, the government used a cell site expert  
21 with FBI to really delve into the cell site information in  
22 order to demonstrate how materially false the statements  
23 were that the defendant made about not knowing Cobb was  
24 involved. And that actual cell site report is Government  
09:19:13 25 Exhibit F, and the information from that report, instead of



1 having the cell site expert testify here at sentencing --  
2 the witness testify at sentencing, defense counsel agreed to  
3 stipulate to the admission of the exhibit and summary  
4 charts. So I'll just briefly go through the summary chart.  
09:19:35 5 In the right-hand column you can see meetings between Thomas  
6 and Chicago co-conspirators including Earl Cobb, who the  
7 first false statement is about, and an uncharged defendant,  
8 CM. And as you can see, there are numerous dates in which  
9 the defendant traveled to meet the Chicago co-conspirators,  
09:19:54 10 including dates where Cobb himself and Thomas himself, met  
11 at a location around Sawyer, Michigan. So there was a date  
12 on 12/5 where Thomas met CM and Cobb around Sawyer,  
13 Michigan. 12/6, Thomas and Preston met Josiah Preston, a  
14 co-defendant, met CM and Cobb first at 3:58 p.m. that day.  
09:20:16 15 Then on 12/6 at 11:19 p.m., Thomas and Preston met Cobb  
16 again, in Sawyer. So twice in one day they met Cobb. And  
17 notably at 11:19 p.m., one, the cell site for CM, he was not  
18 there, it was just Cobb that came from Chicago on that date  
19 and time.

09:20:35 20 And then 12/7 at 6:49 p.m., Thomas and Cobb met at  
21 Sawyer. A meeting between the two of them there, and there  
22 are several dates there. There is one around Coloma,  
23 Michigan, on 12/12 at 9:53 a.m., where Cobb and Thomas hit  
24 off towers in Coloma, Michigan, around the same time.

09:20:57 25 These are shown in the chart with corresponding

1 dates of significant withdrawals in the fraud. So for  
2 example, on 12/5, the day that Darmesha Gunn, Desiree  
3 Winfield, Elnora Snipes, Mary Radcliff all made withdrawals  
4 at Firekeepers Casino that day, Thomas drove at 8:47 a.m.  
09:21:19 5 and met CM north of Sawyer, and then at 3:37 p.m., and met  
6 Cobb and CM north of Sawyer, Michigan. You can see there  
7 are numerous trips back and forth between Tirrell Thomas and  
8 the Chicago co-conspirators, including trips where he was  
9 there and others where he was alone. So that's just cell  
09:21:38 10 site evidence.

11 Next we have phone contacts between Cobb, and that  
12 would be Government Exhibit C. Just based on toll records  
13 alone we have for a two month period, November 1st to  
14 January 1st, two months only 17 dates of contacts on the  
09:21:56 15 phone between Cobb and Thomas, and of those 17 dates, 15  
16 were dates on which fraud was occurring. So to the extent  
17 there is an argument they were talking because they were  
18 family members, I think it's belied by the fact that almost  
19 all of their contacts, 15 of 17 days happened while fraud  
09:22:14 20 activity is happening in Michigan. Those contacts between  
21 Thomas and Cobb.

22 The proffer statements of multiple individuals and  
23 grand jury testimony of Josiah Preston with the government  
24 would move to admit as one of the stipulated exhibits here,  
09:22:32 25 that is at Government Exhibits G is Josiah Preston's

1 proffer, and H and I are the grand jury statements.

2 Josiah Preston testified he was with Thomas when  
3 they went and brought money to Cobb and CM over in Sawyer  
4 and also did that at Thomas's request on numerous occasions.  
09:22:54 5 Additionally, Thomas explained to him that the cut of money  
6 with the Chicago people was as 60/40. Sixty to the Chicago  
7 people, and including for the reason that they were taking  
8 more of a risk in that Earl is how Thomas referred to him  
9 was actually the one depositing the money. So I think the  
09:23:11 10 proffer statements, recognizing that those individuals are  
11 not remember to testify, these statements were made and the  
12 evidence from the cell sites and phone records corroborate  
13 the fact that the defendant knew full well that Cobb was  
14 involved. He may not have known that Cobb was the one who  
09:23:28 15 actually deposited the checks, although Josiah Preston said  
16 he did learn that at some point from Mr. Thomas, but he knew  
17 he was involved, he was turning over fraud assets to him in  
18 various places in Michigan toward Illinois.

19 The second false statement is one that is even  
09:23:46 20 clearer is that the defendant told the probation officer  
21 that he only recruited Mr. Fry into the offense and even  
22 said that it wasn't so much of a recruitment as he told him  
23 about it. Defense counsel points out in Mr. Fry's proffer  
24 he said there were different people doing their own thing.  
09:24:04 25 Mr. Fry was talking about one other person, Mr. -- RD would

1 be the initials who indeed the type of fraud he did at the  
2 casino that night was not very similar to the fire cracking  
3 scheme, it was a little different. But the remainder of the  
4 scheme is very consistent and coherent with all of these  
09:24:19 5 defendants and the Defendant Thomas's involvement with all  
6 of the other people is very clear. So I do not think that  
7 in any way downplays Mr. Fry's role in this or his  
8 statements about Mr. Thomas, and we will talk about his  
9 statements about Mr. Thomas momentarily.

09:24:32 10 So following the government's response to the PSR  
11 through his filings, the defendant has admitted that oh,  
12 yes, in addition to Mr. Fry, I also recruited Preston. And  
13 that is stated in the Record Number 524, Page ID 2675 in the  
14 defendant's response following the PSR after seeing the  
09:25:00 15 government's response, the defendant admitted to recruiting  
16 Preston. Then in the defendant's sentencing memorandum, it  
17 evolved a little bit in the Record 536, Page ID 2922 to 23,  
18 the defendant said -- admitted that he and Mr. Fry recruited  
19 Preston. So under either scenario, while speaking with the  
09:25:19 20 probation officer, the defendant admits only the recruitment  
21 or conversation with one person, namely Mr. Fry, but  
22 following the government's disclosure of oh, additional  
23 cooperators, the defendant then makes it known yes, he also  
24 recruited Preston. This is material, this is another person  
09:25:37 25 who then went on to recruit numerous other individuals into

1 the scheme and make significant amounts of money for the  
2 defendant and for the Chicago co-conspirators. So that is  
3 the second significant lie there.

4 The third is the defendant's denial of a  
09:25:51 5 supervisory role. And the evidence on the defendant's  
6 pervasive, really ever present involvement in every aspect  
7 of this fraud is evidenced both through the cooperator's  
8 statements and the exhibits that were admitted. We've  
9 already talked about Exhibits A and C, respecting phone  
09:26:11 10 information. I'll point the Court's attention now to  
11 Government Exhibit B. So this is a chart of text messages  
12 that were sent from a recruiter who is now deceased, JS, to  
13 the defendant. And this shows the type of information the  
14 defendant was collecting from the direct recruiters of the  
09:26:32 15 account holders. So Government's Exhibit B, for example, on  
16 December 1st, this respect representing Co-Defendant Brenda  
17 Davis. JS sent the defendant a picture of her bank card,  
18 that would be the second page, a picture of her license.  
19 This is information that is then used, is conveyed to  
09:26:54 20 Chicago so that the people in Chicago can deposit the  
21 fraudulent money into people's accounts in Michigan. The  
22 defendant was correcting this information from the direct  
23 recruiters.

24 Then we have information about DT, another subject  
09:27:07 25 who is uncharged in this case, his license and information.

1 We have information about Antwan Younger, a co-defendant in  
2 this case, a photograph of his account info, a photograph of  
3 his license is on Page 7 of 10 of that document. We have a  
4 woman, Tiffany Sanders, a co-defendant also in this case,  
09:27:30 5 her license, handwritten account number, PIN number for her  
6 debit card. Again, all of this was sent to the Defendant  
7 Thomas from one of the direct recruiters, yet the defendant  
8 denied he had any supervisory role except for kind of  
9 telling Fry about the scheme and later recruiting Preston  
09:27:50 10 with Fry. This is another recruiter altogether who has sent  
11 account information to the defendant.

12 Government Exhibit D outlines all of the vehicles  
13 that the defendant either rented or owned or used to  
14 facilitate transportation of the various account holders and  
09:28:12 15 the direct recruiters to numerous locations. He rented  
16 vehicle, an Impala that was used on several dates to  
17 transport people to Firekeepers Casino and to banks. On  
18 12/19, the defendant's minivan -- or sorry, mini van rented  
19 by the defendant and the defendant's own Buick Enclave were  
09:28:36 20 seen at Four Winns Casino. And the defendant's Dodge truck  
21 was used at Firekeepers Casino on 12/19. So there are  
22 numerous instances where the defendant helped facilitate the  
23 fraud by using vehicles to get people there.

24 Government Exhibit E are the surveillance images.  
09:29:01 25 The defendant regularly, as said in the proffer reports and

1 other statements that were attached or that are submitted  
2 here, that the defendant didn't necessarily always go  
3 inside, but was outside in a parking lot in his vehicle  
4 while fraud was occurring in various places. These are  
09:29:20 5 numerous dates where the defendant was seen inside with  
6 several different people. The first instance is on December  
7 1st, was account holder, Kevin Hunter. The defendant was  
8 inside the casino at that time. He is seen in that second  
9 picture on the page there in the red and the black, and the  
09:29:39 10 second page he is with Hunter, he is with Mr. Fry. Clearly  
11 he is aware of what is going on, and then you see the white  
12 Impala on Page 3 of that exhibit.

13 On Page 4 of that exhibit, the incident where  
14 Darmesha Gunn and Desiree Winfield were making withdrawals.  
09:29:57 15 The defendant was also there in the casino at that time, and  
16 he is captured on the surveillance on the top of Page 5  
17 there, and this was with a completely different mid-level  
18 recruiter, Jerome Perry, who the defendant presumably does  
19 not know, yet was with him that night and did not mention  
09:30:15 20 that to the probation officer.

21 THE COURT: You don't think that's a coincidence?

22 MS. ZELL: I do not think all of these incidents  
23 are coincidental.

24 And then on the final page of that exhibit, there  
09:30:24 25 is the deceased recruiter, JS, with the defendant in the

1 passenger's seat while they are making withdrawals from  
2 Antwan Younger's account. And then the numerous statements  
3 of the cooperating defendants. We have discussed Josiah  
4 Preston briefly, and as mentioned, the government provided  
09:30:44 5 these in advance both to the Court and defense counsel for  
6 review, and the involvement, the supervisory role of Thomas  
7 is just evident throughout each of these, that he was the  
8 person to whom everybody turned over their money, he was the  
9 one connecting and talking regularly with Chicago, he was  
09:31:02 10 the one really keeping tabs on people as they went inside  
11 casinos, who was worried when things weren't going right and  
12 had to sort of face the kind of conversation with the  
13 Chicago folks when things weren't going well. That Kyle  
14 Mosley, just to respond to one thing defense counsel said,  
09:31:15 15 Kyle Mosley did not know Earl Cobb was depositing checks in  
16 Chicago is irrelevant, he was not a leader in the scheme by  
17 any means, and that speaks nothing to whether Thomas knew  
18 his own cousin was involved in the scheme. There is no  
19 suggestion that Mosley actually has met or dealt directly  
09:31:34 20 with Cobb.

21 So for these reasons, the government believes that  
22 the defendant's obstruction -- that these three statements  
23 in particular were false. They are materially false,  
24 because they are intended to impact this Court's decision in  
09:31:50 25 term of what the appropriate sentence should be, whether it



1 be within the guidelines, above or below the guidelines, for  
2 that reason the government believes the obstruction of  
3 justice enhancement is appropriate, and the defendant is  
4 not-- he should not be getting responsibility -- acceptance  
09:32:04 5 of responsibility credits at all.

6 Thank you.

7 THE COURT: Thank you. So Ms. Zell, you're moving  
8 A through L?

9 MS. ZELL: Yes, the government would move to admit  
09:32:16 10 A through L.

11 THE COURT: Mr. Nieuwenhuis?

12 MS. NIEUWENHUIS: I agreed with the government,  
13 your Honor.

14 THE COURT: Government Exhibits A through L are  
09:32:21 15 received.

16 Miss Nieuwenhuis, you may go ahead.

17 MS. NIEUWENHUIS: Well, your Honor, the defense has  
18 stipulated to these exhibits because the phone records are  
19 the phone records. It still does not absolutely prove  
09:32:43 20 exactly how much Mr. Thomas knew about Mr. Cobb. They are  
21 cousins, however, they are -- they do not live in the same  
22 town, and yes, there are conversations around when these  
23 incidences occurred, and Mr. Thomas is not saying he wasn't  
24 involved and deeply involved and deserved the supervisory  
09:33:08 25 role. And so I would just point out, I don't know if the

1 government misinterpreted a little bit of our sentencing  
2 memorandum, we are not saying that Mr. Thomas is standing  
3 here telling the Court that these were just, you know,  
4 family contacts with Mr. Cobb, that's not the case, your  
09:33:25 5 Honor, and I don't think Mr. Thomas has ever said that, your  
6 Honor.

7 THE COURT: The Application Note 1 of the  
8 acceptance guideline saying, "A defendant who falsely denies  
9 or frivolously contests relevant conduct that the Court  
09:33:50 10 determines to be true has acted in a manner inconsistent  
11 with acceptance."

12 MS. NIEUWENHUIS: Uh-huh.

13 THE COURT: How do you view the denial that your  
14 client knew that Mr. Cobb was a co-conspirator impacts that  
09:34:13 15 sentence?

16 MS. NIEUWENHUIS: Well, if we take that, that is  
17 exactly what Mr. Thomas said, that is very problematical.  
18 However, like I said, and I--

19 THE COURT: But do you want Mr. Williams to  
09:34:28 20 testify? I mean if it's boiling down to what Mr. Williams  
21 understood Mr. Thomas to say, then we can have Mr. Williams  
22 testify and we can have Mr. Thomas testify. Obviously he  
23 didn't have to testify if he doesn't want to, but if there's  
24 a contest on that matter, do you want a record made or not?

09:34:53 25 MS. NIEUWENHUIS: No, your Honor.

1 THE COURT: So I can assume that the report  
2 accurately reflects the conversation? I mean it's either  
3 one or the other. Either the report is accurate or you wish  
4 to contest it.

09:35:11 5 MS. NIEUWENHUIS: I said I do believe that the  
6 report certainly reflects what Mr. Williams recalled that  
7 conversation.

8 THE COURT: Because it's got to be one or the  
9 other. Defense takes the position that the report is  
09:35:23 10 accurate or the report is not accurate, and then to the  
11 extent that there may be some contest about that, then I  
12 think the way to solve that is have Mr. Williams testify.  
13 But if you are in a position to say that the report is  
14 accurate, that takes care of it for me.

09:35:43 15 MS. NIEUWENHUIS: I do believe the report is  
16 accurate and that that is the recollection of the Probation  
17 Officer Williams, your Honor.

18 THE COURT: All right. That's fine.

19 MS. NIEUWENHUIS: And like I said--

09:35:53 20 THE COURT: What about this notion of only  
21 admitting at first until the government tips their hand as  
22 to exactly what they know, that the only person he recruited  
23 was Mr. Fry and then the government makes a submission to  
24 the Court and all of the sudden Mr. Thomas decides, oh yes,  
09:36:09 25 I recruited Preston too.

1 MS. NIEUWENHUIS: I discussed this even before the  
2 Court was given documents, your Honor, with Mr. Thomas, he  
3 did agree with me he had recruited him. And whether or not  
4 that was something that he just did not say at his  
09:36:26 5 presentence interview, it is what it is. But he certainly  
6 readily admitted that to me. And I know I'm kind of beating  
7 a dead horse, but I just want the Court to be very aware  
8 that if we are looking at, you know, what things Mr. Thomas  
9 was saying in regards to try and limit I guess his exposure  
09:36:53 10 on guidelines or whatever, the whole issue around his  
11 knowledge and leadership, he knew from day one he was going  
12 to be scored with that. We have a stipulated fact pattern.

13 THE COURT: That's really not the inquiry on  
14 acceptance, is it? If you falsely deny relevant conduct,  
09:37:08 15 that's problematic for getting acceptance. It's not the  
16 application of a four level enhancement for being a leader.  
17 It's falsely denying relevant conduct, it seems to me, that  
18 the scope of the number of conspirators, including a person  
19 who happens to be the defendant's cousin is material to the  
09:37:33 20 scope of the conspiracy, and therefore, it's relevant  
21 conduct, and to the extent that there is a false denial of  
22 that, that's problematic, it seems to me.

23 MS. NIEUWENHUIS: Well, and I would just, I guess,  
24 respectfully disagree only because from day one in my  
09:37:53 25 discussions with Mr. Thomas I find it very hard to, I guess,

1 wrap my head around the fact that he would lose acceptance  
2 over something -- his statements being interpreted that it  
3 was going to affect his guidelines when he knew he was  
4 getting scored. That's really the point I wanted to make  
09:38:14 5 for the Court, your Honor.

6 THE COURT: All right. Thank you.

7 MS. NIEUWENHUIS: Thank you.

8 THE COURT: The objection of the defendant is  
9 overruled. The Court is does not intend to give Mr. Thomas  
09:38:25 10 acceptance. I think the false statements outlined by Miss  
11 Zell during the course of her presentation, especially as it  
12 relates to the fact that the assertion to the Court's  
13 probation officer that Mr. Thomas didn't know Mr. Cobb was  
14 involved. Mr. Cobb and Mr. Thomas are cousins. The  
09:38:45 15 government has a mountain of evidence that Mr. Thomas must  
16 have known that Mr. Cobb was involved in this conspiracy.  
17 Then the other piece of particular note for the Court is  
18 that in terms of falsely denying relevant conduct, he only  
19 recruited Mr. Fry until the government makes a filing, oh  
09:39:11 20 yeah, I recruited Preston too. This is not a person who is  
21 telling the entire truth regarding relevant conduct. Now,  
22 he could have stayed silent and would have been in a  
23 different position, but he affirmatively lied to Mr.  
24 Williams during the course of his interview, and in Court's  
09:39:36 25 judgment, the test is falsely denying relevant conduct. And

1 in this case, the scope of the conspiracy and the identity  
2 of the conspirators is relevant conduct as far as the Court  
3 is concerned, and this defendant falsely denied relevant  
4 conduct, clearly within the contours of Application Note 1.  
09:39:58 5 The exhibits that the government has provided to the Court  
6 prove beyond any peradventure that Mr. Thomas's theory here,  
7 at least in part, as presented to the probation officer is  
8 fiction.

9 So with that, the objection is overruled. The  
09:40:27 10 Court finds that the advisory guideline range is 70 to 87  
11 months.

12 With that, allocution, Ms. Zell.

13 MS. ZELL: Thank you, your Honor.

14 Having walked through much of the evidence already  
09:40:43 15 that the government has admitted with those exhibits, the  
16 government believes that a sentence within the guidelines  
17 range of 70 to 87 months is appropriate in this case. The  
18 defendant was the leader of the Michigan cohort of this  
19 fraud, which was expansive.

09:40:58 20 There was a significant loss amount in the overall  
21 scheme, intended loss is over \$700,000 for the checks  
22 deposited by the defendant's cousin over in Chicago. With  
23 respect to the Michigan people alone, over \$400,000 in  
24 fraudulent checks deposited. The defendant was always  
09:41:15 25 there. He was over in-- I believe there is maybe one or two

1 instances where he was not at the casino, Firekeepers, but  
2 drove over to MGM casino. He was at Firekeepers Casino. He  
3 was, his vehicles were at Gun Lake. He drove and handed  
4 over significant quantities of money, thousands of dollars  
09:41:35 5 to the Chicago co-conspirators. He did all of this after  
6 multiple prior federal convictions -- or multiple prior  
7 convictions, and the defendant clearly has not learned from  
8 his previous time in federal prison that he cannot continue  
9 to lead a-- to participate in crime and lead a life of  
09:41:53 10 crime. He has evolved. He has sort of changed how he has  
11 been committing crime, but he is in no way kind of turned  
12 away from that lifestyle, and this is an expansive fraud  
13 where he was the leader of it. He was someone who got other  
14 people involved, who then got other people involved, and the  
09:42:12 15 consequences on the lives of the account holders in this  
16 case, on all of the people that the defendant was directly  
17 involved with and responsible either for recruiting or for  
18 overseeing is expansive here, and the defendant himself  
19 needs to be specifically deterred from continuing to engage  
09:42:31 20 in crime, and there is also a matter of general deterrence  
21 here at issue with people who attempt to commit crimes like  
22 this that may seem easy in order to get a bunch of money,  
23 you could do something, you know, very simple in perhaps  
24 their eyes, but that is a very serious concern, and it needs  
09:42:47 25 to be communicated to the public that this type of crime

1 will not be tolerated in this district.

2 The defendant needs to learn respect for the law.  
3 He needs to be specifically deterred, and a sentence within  
4 the guidelines range would provide just punishment here for  
09:43:03 5 the very serious offense the defendant committed. Thank  
6 you.

7 THE COURT: Thank you, counsel.

8 Miss Nieuwenhuis, I should state for the record  
9 that I have had the benefit of the defendant's sentencing  
09:43:13 10 memorandum, which is ECF 536, the government's sentencing  
11 memorandum, which is ECF 537.

12 So with that, Miss Nieuwenhuis, you may proceed.

13 MS. NIEUWENHUIS: Your Honor, and I understand that  
14 the Court has not granted acceptance. We did also  
09:43:33 15 specifically object to the enhancement of obstruction of  
16 justice, and just for appellate purposes I'm wondering if  
17 the Court could just make a very short ruling on that.

18 THE COURT: Oh, absolutely. The obstruction is  
19 clear as far as the Court is concerned based on the same  
09:43:50 20 record, so.

21 MS. NIEUWENHUIS: Okay.

22 THE COURT: Then of course, when you get an  
23 obstruction enhancement, the guidelines have certain things  
24 to say about getting acceptance, but I think this is  
09:44:02 25 independent. Whether or not I follow that guidance from the



1 sentencing commission, it's clear to the Court that Mr.  
2 Thomas should get obstruction and he should get acceptance,  
3 so.

4 MS. NIEUWENHUIS: And I understood that, your  
09:44:14 5 Honor, I just wanted.

6 THE COURT: And I appreciate.

7 MS. NIEUWENHUIS: I wanted that clarified on the  
8 record.

9 THE COURT: Thank you very much, I appreciate your  
09:44:21 10 bringing that to my attention.

11 MS. NIEUWENHUIS: Your Honor, Mr. Thomas is 39  
12 years old, your Honor. He is very close to two brothers  
13 that he cares for. They are severe diabetics and receive  
14 dialysis. He has been kind of their home care nurse. Mr.  
09:44:48 15 Thomas himself has numerous health issues, he has diabetes,  
16 high blood pressure, and he does have an issue that came up,  
17 and the Court had adjourned sentencing originally for that  
18 he is looking and seeking treatment for as well, your Honor.

19 I would like to talk a little bit about Mr.  
09:45:18 20 Thomas's upbringing. He really had no relationship with his  
21 father. His father much of the time was incarcerated. He  
22 had heavy addictions of marijuana and cocaine. But the  
23 defendant's mother was very supportive with Mr. Thomas. Mr.  
24 Thomas himself has five children. He has indicated that he  
09:45:44 25 has an addiction to gambling. He did earn his GED. He

1 worked at Martin and Associates Environmental from 2012 to  
2 2016 and then quit to care for his brothers, your Honor. He  
3 is very interested in vocational training.

4 He has been on bond for a long time, since August  
09:46:09 5 28th of 2017. He is interested in, if the Court would  
6 consider recommending Milan facility, they have the life  
7 skills course there, and he is very interested in taking  
8 that, your Honor.

9 THE COURT: All right. Thank you, counsel.

09:46:26 10 MS. NIEUWENHUIS: You're welcome.

11 THE COURT: Mr. Thomas, is there anything you wish  
12 to say in your own behalf, sir? You may proceed as you  
13 wish.

14 THE DEFENDANT: Yes. I want to say, I take full  
09:46:35 15 responsibility of this crime that I committed, and you know,  
16 I could have had a lot of my family here and stuff, but I'm  
17 really disgusted with myself on getting -- putting myself in  
18 another bad situation once again, you know. And it ain't no  
19 excuse, but I didn't think that it was going to turn out to  
09:46:58 20 be what it is, and I'm not saying it to be an excuse. I was  
21 scammed too, you know, told other things to make fast money,  
22 and then it turned around to be this, which I'm taking full  
23 responsibility for, but I didn't know that it was going to  
24 happen the way it did happen.

09:47:15 25 Once again, like she had said, I want to take the

1 life connection program, find me a religion. It's just time  
2 for me to change, you know. I don't know. I just they say  
3 I haven't learned, but in reality, I have learned, you know.  
4 It's just criminal thinking just, I don't know. I don't  
09:47:40 5 even know what to say, but I know might not believe me  
6 whatever, but I have learned a lesson and one thing about --  
7 I wanted to mention was what they did in Chicago, I didn't  
8 know how everything worked out in Chicago, but I did -- like  
9 they didn't tell me, we doing this to do this to do this, or  
09:48:05 10 deposit checks. I didn't ask who deposited checks. I  
11 didn't care honestly, I was just trying to get fast money so  
12 when they did ask me if my cousin, Earl Cobb, had deposited  
13 checks, you know what I'm saying, I didn't know what was all  
14 going on, because I wouldn't have deposited no checks on  
09:48:26 15 camera just go in guilty automatically, you know.

16 That's basically it. And once again, I really want  
17 to do this religious program, find something different for  
18 me to do, try something different. I took the drug program,  
19 that helped me a lot. So I want to try religious program.  
09:48:49 20 Plus I got two new children, close to home. And that's it,  
21 I'm just recommending if I can go to take that religious  
22 program, and sorry to the Court, and I reached out to a  
23 couple people that I did feel like I kind of ruined their  
24 life or, you know, gave them felonies or got them in a  
09:49:11 25 messed up situation, but I don't know. I guess that's it.

1 THE COURT: Thank you, sir.

2 Miss Nieuwenhuis, what was the name of the program,  
3 Life Connections?

4 MS. NIEUWENHUIS: I think it is actually Life  
09:49:27 5 Connections, your Honor, I believe I said Life Skills, but I  
6 believe it's Life Connections, your Honor.

7 THE COURT: Thank you. You may be seated, Mr.  
8 Thomas.

9 It is the Court's duty to impose a sentence  
09:49:35 10 sufficient, but not greater than necessary to comply with  
11 the purposes of sentencing set forth in 18 U.S. Code  
12 3553(a).

13 The Court recognizes the guidelines are advisory to  
14 the Court, but I have taken the guidelines into account as  
09:49:48 15 an initial benchmark or starting point when sentencing in  
16 this case.

17 I recognize I must make an individualized  
18 assessment based on the facts presented. The guideline  
19 range is one of the array of factors warranting  
09:50:00 20 consideration.

21 I also fully recognize my discretion in determining  
22 an appropriate sentence as recognized by the United States  
23 Supreme Court in its decisions in Booker, Kimbrough, Rita,  
24 Gall, Spears, and the Sixth Circuit case of Herrera-Zuniga.

09:50:13 25 Pursuant to Tapia vs. The United States, at 131

1 Supreme Court 2382, the Court recognizes that imprisonment  
2 is not suitable for the purpose of promoting correction and  
3 rehabilitation.

4 I have considered all of the defendant's arguments  
09:50:28 5 in support of his request for a lower sentence.

6 The 3553 factors are the nature and circumstances  
7 of the offense, and the history and characteristics of the  
8 defendant. The sentence must reflect the seriousness of the  
9 offense; promote respect for law; provide just punishment  
09:50:43 10 for the offense; afford adequate deterrence to criminal  
11 conduct; to protect the public from further crimes of the  
12 defendant; provide the defendant with needed -- provide the  
13 defendant with needed medical, educational, and/or  
14 correctional treatment; the need to avoid unwarranted  
09:50:58 15 sentencing disparity among similarly situated defendants;  
16 any guideline policy statements that pertain; and the kinds  
17 of sentences available to the Court.

18 First, as far as recommendations to the Bureau of  
19 Prisons is concerned, the Court notes that Mr. Thomas does  
09:51:15 20 have some medical conditions that need attention while he is  
21 incarcerated.

22 Second, that he receive vocational/educational  
23 opportunities. He has specific interest in the Life  
24 Connections program, and while the Court will not recommend  
09:51:31 25 a specific facility, I think to the extent Mr. Thomas

1 believes this program will help him, with a recommendation  
2 to the Court, the Court hopes that he can be assigned to a  
3 facility that does have that program.

4 Third, the defendant, to say that this defendant  
09:51:50 5 has thinking errors would be a gross understatement. This  
6 defendant needs cognitive behavioral treatment program while  
7 he is in the institution as well.

8 The Court recognizes that Mr. Thomas had a  
9 difficult childhood. And I'm sure that poses part of the  
09:52:17 10 picture here, but at some point, the citizens of the Western  
11 District of Michigan are entitled to have Mr. Thomas be a  
12 law abiding citizen. This is his third felony conviction in  
13 this district.

14 He apparently has learned nothing from his prior  
09:52:41 15 experiences in the federal court. He started his  
16 involvement in this offense almost immediately after being  
17 released from supervision on his second federal felony. To  
18 say that specific deterrence is an issue here for the Court  
19 to consider is one that is extremely important, as far as  
09:53:08 20 the Court is concerned. Not that I haven't considered all  
21 of the other 3553 factors, but this is a major circumstance,  
22 as far as the Court's concerned.

23 Protection of the public from further crimes of the  
24 defendant. As I said before, this is his third felony  
09:53:26 25 conviction in this district.

1 His Criminal History Category is III. He is a  
2 relatively young man at age 39 or 40. He is doing life on  
3 the installment plan, and unless he starts thinking in a  
4 different way and decides to be a law abiding citizen. He  
09:53:49 5 impresses me as a very intelligent person. Unless he starts  
6 making better decisions for himself, which are pro-social  
7 and staying on the right side of the law he is just going to  
8 continue to be incarcerated.

9 His performance, and I'll say the word performance,  
09:54:08 10 his performance at the interview with Mr. Williams was a  
11 sight to behold. I mean when it's in his interests to tell  
12 the truth, he lies. That's not good. That's a bad  
13 decision. And that's why he got obstruction, and that's why  
14 he got acceptance. I hope Mr. Thomas takes that to heart.  
09:54:32 15 That he needs to tell the truth. This fraudulent conduct  
16 here, Mr. Thomas related something about other people  
17 getting involved in this scheme, and I fully recognize Mr.  
18 Thomas didn't recruit all of these people, but he got a four  
19 level enhancement for his role and the number of individuals  
09:54:54 20 who are now federal felons because of Mr. Thomas'

21 involvement in this conspiracy with others is staggering.  
22 They had no record, and because others preyed on them  
23 because they needed money, they are now federal felons.

24 The guidelines, in the Court's judgment, the  
09:55:24 25 guideline range is insufficient to address just punishment,

1 specific deterrence of Mr. Thomas, and protection of the  
2 public from further crimes of the defendant. I also must be  
3 mindful of general deterrence of others who might  
4 contemplate similar criminal activity.

09:55:47 5 This was a massive fraud in the Western District of  
6 Michigan and multiple locations, with multiple people, and  
7 Mr. Thomas was at the pinnacle of this scheme with a four  
8 level enhancement for his role in it. So the nature and  
9 circumstances of the offense, among other factors including  
09:56:11 10 the ones I've already have outlined, the Court believes that  
11 a variance from the advisory guideline range, based on those  
12 3553 factors are attendant to this particular case, a  
13 variance upward of two levels results in a guideline range  
14 of 87 to 108 months, and it's the Courts's intention to  
09:56:40 15 impose a sentence towards the upper end of that guideline  
16 range.

17 Accordingly, it's the judgment of the Court the  
18 defendant is committed to the custody of the Bureau of  
19 Prisons for a term of 102 months on each Count One and  
09:56:54 20 Three, to be served concurrently.

21 Upon release from imprisonment, the defendant shall  
22 be placed on supervised release on both counts for four  
23 years, those terms to be run concurrently.

24 Within 72 hours of release from custody of the  
09:57:08 25 Bureau of Prisons, the defendant shall report in person to



1 the probation office in the district to which he is  
2 released.

3 While on supervised release, the defendant shall  
4 comply with the mandatory and standard conditions of  
09:57:20 5 supervision, including DNA collection, drug testing, he is  
6 not to possess any firearms, destructive devices, or  
7 dangerous weapons.

8 Additionally, the defendant shall comply with the  
9 following special conditions of supervision:

09:57:32 10 Participate in a program of testing and treatment  
11 for substance abuse as directed. Follow the rules of the  
12 program until such time as he is released from the program  
13 by his probation officer, and pay at least a portion of the  
14 cost according to his ability to pay, as determined by his  
09:57:46 15 probation officer.

16 He must not use or possess any controlled  
17 substances without a valid prescription. If he has a valid  
18 prescription, he must follow the instructions on the  
19 prescription. He must not possess, use, or sell marijuana  
09:58:00 20 or any marijuana derivative, including THC in any form  
21 including edibles or for any medical purposes. He is also  
22 prohibited from entering any marijuana dispensary or grow  
23 facility.

24 He must provide his probation officer with access  
09:58:17 25 to any requested financial information authorize the release

1 of financial information, and the probation office will  
2 share financial information with the United States  
3 Attorney's Office.

4 He must participate in a cognitive behavioral  
09:58:30 5 treatment program as directed. Follow the rules of that  
6 program until such time as he is released from the program  
7 by his probation officer, and pay at least a portion of the  
8 cost according to his ability to pay.

9 He must not frequent any establishment where  
09:58:47 10 gambling is conducted legally or illegally. He must not  
11 participate in gambling in any form including, but not  
12 limited to Lottery, on-line wagering and sports betting. He  
13 must participate in a gambling addiction treatment program  
14 as directed and follow the rules of that program, and pay  
09:59:01 15 the costs of the program, if he is financially able.

16 No cell phone or other electronic device without  
17 the prior permission of his probation officer. If he is  
18 given permission to have a cell phone or other electronic  
19 device. The device must be in his name or a name approved  
09:59:19 20 in advance by his probation officer. And he shall provide  
21 the monthly bill for the device with each monthly report.

22 The Court finds the defendant does not have the  
23 ability to pay a fine. The restitution ordered is  
24 \$214,286.03 payable to Bank of America. The special  
09:59:41 25 assessment of \$200 total, that is \$100 on each count, is

1 offered due and payable immediately.

2 Miss Nieuwenhuis, any other recommendations to the  
3 Bureau of Prisons that you would like?

4 MS. NIEUWENHUIS: No, your Honor, thank you.

10:00:11 5 THE COURT: Any legal objection to the sentence  
6 imposed, other than the ones already stated on the record?

7 MS. NIEUWENHUIS: No, your Honor, but I guess for  
8 the record, we would object to the upward variance.

9 THE COURT: All right. Thank you.

10:00:25 10 Miss Zell, any legal objections to the sentence  
11 imposed?

12 MS. ZELL: No, your Honor.

13 THE COURT: Miss Nieuwenhuis, are you satisfied I  
14 have addressed all of your arguments on the record?

10:00:32 15 MS. NIEUWENHUIS: I believe the Court has, your  
16 Honor.

17 THE COURT: All right. Thank you.

18 Miss Zell, are there counts to be dismissed?

19 MS. ZELL: Yes. The government would move to  
10:00:37 20 dismiss Counts 2, 4 through 22, and 24 through 26.

21 THE COURT: Those counts are dismissed pursuant to  
22 the plea agreement.

23 Mr. Thomas, I advise you, sir, you can appeal your  
24 conviction if you believe that your guilty plea was somehow  
10:00:51 25 unlawful or involuntary or if there's some other fundamental

1 defect in the proceeding not waived by your guilty plea.

2 You also have a statutory right to appeal your  
3 sentence under certain circumstances, particularly if you  
4 think the sentence is contrary to law. You have the right  
10:01:08 5 to apply for leave to appeal in forma pauperis if you are  
6 poor. If you wish to do so, with a few exceptions, you need  
7 to file the appropriate documents within 14 days of the  
8 entry of the judgment in this case.

9 Your attorney will prepare and file a notice of  
10:01:18 10 appeal upon your request.

11 Counsel is advised of her obligation to advise her  
12 client of his appellate rights. Should your client wish to  
13 pursue an appeal, the forms for filing an appeals can be  
14 found on this Court's website or the Court of Appeals'  
10:01:29 15 website.

16 Should your client choose to appeal, you are  
17 obligated to continue representation of him until such time  
18 as you are specifically relieved by the Court of Appeals.

19 Defendant is remanded to the custody of the marshal  
10:01:45 20 for execution of sentence.

21 Miss Zell, anything further?

22 MS. ZELL: No, your Honor. Thank you.

23 THE COURT: Miss Nieuwenhuis?

24 MS. NIEUWENHUIS: No, your Honor. Thank you.

10:01:51 25 THE COURT: All right. Defendant is remanded to

1 the custody of the marshal for execution of sentence.

2 COURT CLERK: All rise, please.

3 Court in recess.

4 (At 10:02 a.m. proceedings concluded.)

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## C E R T I F I C A T E

I, Kathleen S. Thomas, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/

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Kathleen S. Thomas, CSR-1300, RPR  
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